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Report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights*

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, Idriss Jazairy, prepared pursuant to Council resolutions 27/21 and 36/10. In the report, the Special Rapporteur provides updates on the situation in four countries and calls for the negotiation and adoption of a United Nations declaration and guidelines on sanctions and human rights. He considers the application of international humanitarian law to the use of unilateral coercive measures in the context of the Islamic Republic of Iran and notes the issues which arise from the extraterritorial impact of sanctions. He also calls for the appointment of a special representative of the Secretary-General on unilateral coercive measures.

* The report was submitted late to reflect the most recent developments.

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** The annex to the report is circulated as received, in the language of submission only.

I. Introduction

1. The present report is the fourth annual report submitted to the Human Rights Council by the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, pursuant to his mandate, as set out in Council resolutions 27/21 and 36/10.

2. The Special Rapporteur would like to clarify at the outset that, while his mandate refers to "unilateral coercive measures", understood as transnational, non-forcible coercive measures, other than those enacted by the Security Council acting under Chapter VII of the Charter of the United Nations, he uses loosely and interchangeably the expressions "unilateral coercive measures", "unilateral sanctions", "international sanctions" and simply "sanctions" in the present report.

II. Overview of the activities of the Special Rapporteur

3. On 18 October 2017, the Special Rapporteur presented a report to the General Assembly (A/72/370). In the report, the Special Rapporteur reviewed developments regarding unilateral sanctions applied to certain countries and addressed certain aspects of the issue of extraterritoriality in relation to unilateral sanctions.

4. The Special Rapporteur carried out an official visit to the institutions of the European Union from 19 to 22 June 2017 (A/HRC/39/54/Add.1). At the end of his visit he praised the protections included in sanctions legislation, including due process measures for targeted persons, and the availability of remedies. He called upon the European Union to engage internationally to minimize the human rights impact of restrictive measures, including by engaging in negotiations for a declaration on unilateral coercive measures and the rule of law.

5. The Special Rapporteur also visited the Syrian Arab Republic from 13 to 17 May 2017 (A/HRC/39/54/Add.2). At the end of his visit, the Special Rapporteur expressed concern that the current regimes of multiple unilateral coercive measures had had the effect of blocking almost all trade with the country and in particular that it had harmed the ability of humanitarian non-governmental actors to carry out their work there. He called upon States to take action to ensure that legal humanitarian exemptions in sanctions regimes be made practical and effective in the Syrian Arab Republic.

6. On 27 June 2018, the Rapporteur made a presentation at a side event organized by the International Association of Democratic Lawyers entitled "Syria: a different perspective." His intervention focused on the findings of his recent visit to the Syrian Arab Republic and he called for States to identify practical ways to lift the impact of unilateral coercive measures on humanitarian actors in the country.

III. Recent developments regarding the use of unilateral sanctions

7. The past year has seen a number of significant developments regarding the use of unilateral sanctions against a number of countries. In addition to the detailed information relating to the Islamic Republic of Iran and the Russian Federation set out in the present report, the Special Rapporteur provides a brief discussion of some recent events. Owing to restrictions on the length of the present report, further situations will be elaborated upon in his upcoming report to the General Assembly.

Islamic Republic of Iran

8. The Special Rapporteur continues to monitor closely the worrying developments related to the unilateral sanctions on the Islamic Republic of Iran and expands below on the concerns arising from the withdrawal of the United States from the Joint Comprehensive Plan of Action. He notes the recent application for contentious proceedings before the

International Court of Justice to challenge the announced reimposition of sanctions by the United States.[1] The application cites the imposition of sanctions as violating a number of provisions of the 1955 Treaty of Amity, Economic Relations, and Consular Rights between the Islamic Republic of Iran and the United States.[2] The Special Rapporteur welcomes the reliance on the impartiality of international justice to solve legal disputes arising from the implementation of sanctions.

Qatar

9. The Special Rapporteur continues to monitor the impact of the restrictive measures initiated in June 2017 by a group of countries targeting Qatar, which remain in force. As noted in his most recent report to the General Assembly (A/72/370), the coercive measures in force raise a number of legal issues. He continues to share the concerns expressed by the United Nations High Commissioner for Human Rights in June 2017 that the measures adopted are overly broad in scope and implementation, and agrees that they have the potential to seriously disrupt the lives of thousands of women, children and men, simply because they belong to one of the nationalities involved in the dispute (see A/72/370, paras. 16–18).

10. The Special Rapporteur also notes that the recent step taken by Qatar to initiate contentious legal proceedings before the International Court of Justice,[3] based on alleged violations of the International Convention on the Elimination of All Forms of Racial Discrimination through the imposition of the measures targeting Qatar, should be an opportunity for the Court, as the principal judicial organ of the United Nations, to clarify in general terms the legal issues related to the practice of sanctions under international law (including international human rights law). The response to be given by the Court to the legal issues raised in the proceedings is likely to have an impact well beyond the single case of the current measures targeting Qatar. The Special Rapporteur has noted that the Court, in its Order of 23 July 2018 granting limited provisional measures requested by Qatar, found that "at least some of the rights asserted by Qatar under Article 5 of CERD are plausible" and thus that the situation deserved the granting of some provisional measures pending the final judgment of the Court. Reference was made during the proceedings relating to the request for provisional measures to the findings of the technical mission despatched by the Office of the United Nations High Commissioner for Human Rights, that the measures put in place on Qatar had "a potentially durable effect on the enjoyment of the human rights and fundamental freedoms of those affected".[4]

Syrian Arab Republic

11. During his visit to the Syrian Arab Republic, the Special Rapporteur was concerned about the number of reports from national and international civil society organizations that the impact of multiple, overlapping sanctions regimes, particularly financial ones, have severely impaired their ability to conduct humanitarian activities within the country. Furthermore, the economic impact on ordinary Syrian people and on their ability to obtain certain medicines, particularly for long-term health problems, and spare parts for water pumps and electrical generators are deeply concerning violations of their right to the enjoyment of human rights. The Special Rapporteur calls upon all parties to the conflict to begin serious discussions on how to address the "chilling effect" of sanctions on humanitarian activities in the Syrian Arab Republic, particularly related to financial transfers, and to eliminating the impact of sanctions on the human rights of ordinary Syrians.

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[1] See www.icj-cij.org/files/case-related/175/175-20180717-PRE-01-00-EN.pdf.

[2] See www.state.gov/documents/organization/275251.pdf.

[3] See *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates)*. Qatar submitted its application instituting proceedings on 11 June 2018. From 27 to 29 June 2018, the Court held hearings on the Request for the indication of provisional measures submitted by Qatar.

[4] See *Qatar v. United Arab Emirates*, Order of 23 July 2018 and OHCHR technical mission to the State of Qatar, "Report on the impact of the Gulf crisis on human rights" (December 2017).

Zimbabwe

12. On 2 March 2018, the United States of America extended its sanctions regime on Zimbabwe until 2019.[5] The European Union had already on 12 February 2018 renewed its restrictive measures on Zimbabwe for another year. The Special Rapporteur expresses concern that sanctions were applied to certain politicians in Zimbabwe during the national elections in July 2018 as an unnecessary coercive measure that negatively affected the right of Zimbabweans to choose their own political future.

IV. The case for a draft United Nations declaration and guidelines on sanctions and human rights

13. In his previous report to the Human Rights Council, the Special Rapporteur proposed, inter alia, elements of a draft General Assembly declaration on unilateral coercive measures and the rule of law (see A/HRC/36/44, annex, appendix II). In addition to a series of basic principles regarding unilateral sanctions, the draft text included "universally/generally accepted rules of behaviour" to be applied by States during the transitional period preceding the abolition and elimination of unilateral sanctions, with a view to mitigating their adverse human rights consequences. The Special Rapporteur wishes to clarify here the contents and scope of certain of the accepted rules of behaviour that the General Assembly should reaffirm. That is in response to the demand formulated by the Human Rights Council in its resolution 37/21, requesting the Special Rapporteur, "taking into account the views of Member States, to identify a set of elements to be considered, as appropriate, in the preparation of a draft United Nations declaration on the negative impact of unilateral coercive measures on the enjoyment of human rights, and to submit those elements to the Human Rights Council in his next report". Further to the request he sent to all Member States for comment on 10 May, the Special Rapporteur appeals to interested States to engage on the issue during the interactive dialogue for the present report. The updated elements of the draft declaration are set out in the annex to the present report.

Human rights impact assessments of sanctions

14. Among the elements of the draft declaration, is the rule that, without prejudice to the standing of unilateral coercive measures, or lack thereof, in regard to international law, a human rights impact assessment is to be conducted before sanctions are applied (and as long as sanctions remain in force), formulated as follows: "The parties implementing unilateral sanctions are under an obligation to conduct a transparent human rights impact assessment of the measures envisaged, and to monitor on a regular basis the effects of implementation of the measures, including as regards their adverse effects on human rights" (see A/HRC/36/44, annex, appendix II, para. 13 (a)).

15. Human rights impact assessments in general are instruments for examining policies, legislation, programmes and projects to identify and measure their effects on human rights.[6] The use of comprehensive human rights impact assessments should always be a prerequisite in the design of sanctions measures, all the more so since international sanctions have repeatedly been identified as triggering adverse effects on human rights.[7] They should be conducted by the relevant authorities of the State designing a sanctions regime, but could also be conducted by non-governmental organizations (NGOs) and international organizations, especially in cases where the responsible State(s) fail(s) to conduct such an assessment.

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[5] See www.federalregister.gov/documents/2018/03/05/2018-04628/continuation-of-the-national-emergency-with-respect-to-zimbabwe.

[6] See Nordic Trust Fund and World Bank Group, "Human rights impact assessments: a review of the literature, differences with other forms of assessments and relevance for development" (2013).

[7] For selected examples of the adverse human rights impacts of sanctions, see, for example, A/70/345, paras. 10–47.

16. Human rights impact assessments of sanctions programmes should be conducted ex ante, that is before the measures are enacted, aim to measure the potential future effects of such measures on human rights and possibly adjust or change the sanctions regime with a view to preventing human rights violations. Ex post assessments that measure the actual impact of implemented sanctions through comparisons between the current situation and the situation before the measures were adopted are also important and monitoring should remain in place as long as the sanctions programme considered remains in force. Monitoring should seek to provide answers, inter alia, to the following questions:

(a) What mitigating measures have been adopted by the duty-bearers to mitigate any negative effect foreseen by the assessment?

(b) Have any human rights risks and/or impacts that were foreseen by the assessment materialized? If so, who were the affected stakeholders? Have the duty-bearers taken measures to try to mitigate the negative effects of those risks?

(c) Have there been major human rights risks and/or impacts unforeseen by the assessment? If so, who were the affected stakeholders?

(d) Have there been recurring grievances related to the policy intervention? If so, who were the affected stakeholders?[8]

17. Human rights impact assessments of sanctions regimes can be expected to play an important role in promoting accountability, offering clarity on the scope of human rights obligations and the extent to which duty-bearers have fulfilled them. Impact assessments will typically evaluate the extent to which the subject of the evaluation includes effective accountability mechanisms.[9]

18. It is also important that the conduct of human rights impact assessments allows for effective public participation of the populations affected by sanctions and that the information gathered be made publicly (and widely) available.

19. Effective human rights impact assessments should become a non-derogable standard in cases of sanctions imposed by groups of States or regional organizations. In 2014, the Council of Europe Parliamentary Assembly adopted a resolution calling on all member States of the Council to ensure that the international organizations of which they were members were subject, as appropriate, to binding mechanisms to monitor their compliance with human rights norms and to ensure that their decisions were enforced.[10] They should ratify human rights instruments, where possible, and formulate clear guidelines regarding the waiver of immunity by international organizations or the limitation on the immunity they enjoy before national courts, in order to ensure that the necessary functional immunity did not shield them from scrutiny regarding, in particular, their adherence to non-derogable human rights standards.[11]

Judicial review and effective remedies

20. Another fundamental "accepted rule of behaviour" suggested by the Special Rapporteur is formulated as follows: mechanisms to guarantee due process and the availability of judicial review for obtaining remedies and redress for unilateral coercive measures, should be available to:

(a) Impacted groups, even if non-targeted (by comprehensive or sectoral sanctions);

[8] See Nordic Trust Fund and World Bank Group, "Human rights impact assessments: a review of the literature".

[9] Ibid.

[10] Council of Europe, Parliamentary Assembly, resolution 1979 (31 January 2014) on the accountability of international organizations.

[11] See Dinah Shelton, *Remedies in International Human Rights Law* (Oxford, Oxford University Press, 2015), p. 51.

(b) Individuals and legal persons and entities targeted (by sanctions) but found not to have been given a chance to benefit from due process (see A/HRC/36/44, annex, appendix II, para. 13 (d)).

21. The starting point here is that a number of sanctions regimes operate in such a way that the right to a fair trial of those affected is effectively suspended. As previously stressed by the Special Rapporteur, the availability of judicial review for obtaining remedies and redress for unilateral coercive measures is a requirement that stems from a number of multilateral human rights instruments, to which the main users of sanctions are parties. A right to a remedy for victims of violations of international human rights law is affirmed, for example, in articles 8 and 10 of the Universal Declaration of Human Rights, article 2 of the International Covenant on Civil and Political Rights, article 39 of the Convention on the Rights of the Child, article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination and article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (see A/71/287, paras. 22–27).

22. The right to a fair trial is enshrined in article 14 (1) of the International Covenant on Civil and Political Rights providing that, in the determination of any criminal charges against individuals or of their rights and obligations in a civil suit of law, everyone is entitled to a fair and impartial hearing by a competent, independent and impartial tribunal established by law. It is not disputed that sanctions affect at least the rights and obligations of the targets and thus trigger the "civil" component of article 14 (1). That is irrespective of the question as to whether sanctions, such as the freezing of assets, for example, constitute a sanction belonging to the criminal sphere.[12]

23. What should also be emphasized is that the lack of effective mechanisms for the judicial review of unilateral sanctions measures, and remedies and redress for victims, as appropriate, amount to a denial of justice.[13] That statement should be uncontroversial. It has indeed been observed that most legal systems today recognize the importance of safeguarding the right of access to independent bodies that can afford a fair hearing to claimants who assert an arguable claim that their rights have been infringed. Indeed, many writers include the element of enforceability in their definition of legal rights, because the notion of rights entails a correlative duty on the part of others to act or refrain from acting for the benefit of the rights holder. Unless a duty is somehow enforced, it risks being seen as a voluntary obligation that can be fulfilled or ignored at will.[14]

V. Present issues of outstanding concern

A. The rise of comprehensive sanctions as economic warfare

24. The past months have witnessed increased recourse to sanctions, some of which are clearly not targeted nor intended to be "smart", but are clearly comprehensive, as in the case of the measures introduced against the Islamic Republic of Iran. It may reasonably be argued that applying a comprehensive regime of unilateral coercive measures extending to the imposition of domestic sanctions legislation on third parties, the effects of which almost

[12] On the question of whether (United Nations) sanctions amount to criminal charges, see E. de Wet, "Holding the United Nations Security Council accountable for human rights violations through domestic and regional courts: a case of 'be careful what you wish for'?" in Jeremy Farrall and Kim Rubenstein (eds.), *Sanctions, Accountability and Governance in a Globalised World* (Cambridge: Cambridge University Press, 2009), pp. 143–168.

[13] See generally Jan Paulsson, *Denial of Justice in International Law* (Cambridge, Cambridge University Press, 2005); Antonio Cançado Trindade, *The Access of Individuals to International Justice* (Oxford, Oxford University Press, 2011); and Robert Kolb, *La bonne foi en droit international public* (Paris, Presses Universitaires de France, 2000).

[14] See Dinah Shelton, *Remedies in International Human Rights Law*, p. 17.

equate to those of a blockade on a foreign country, amounts to using economic warfare.[15] The potentially far-reaching, adverse consequences of such actions on human rights are obvious. It has been convincingly argued that this concept of economic warfare, which is not a term of art in international law, may cover not only wartime conduct (economic methods of warfare such as belligerent blockades and the strategic bombing of factory infrastructures), but also decentralized economic (counter-) measures in peacetime, such as civilian blockades or even boycotts voluntarily undertaken by the citizens of one State against the products of another, and collective sanctions imposed by the Security Council.[16] "Decentralized" peacetime measures of economic warfare have been described as measures taken unilaterally by a State that target the economy of another State and aim to apply pressure to bring about a change in the conduct of the target. They may include an economic embargo or boycott, the reduction or withdrawal of economic aid and other restrictions in trade, such as a reduction in quotas or the freezing of the financial assets of the target State.[17]

25. The trend of growing recourse to comprehensive sanctions coupled with secondary sanctions is particularly questionable and raises important human rights concerns, since the measures considered, at least in some cases, amount in practice to some form of blockade and can be deemed to violate some of the most basic rules of international humanitarian law and human rights law. While comprehensive embargoes coupled with secondary sanctions do not obviously fit within the precise concept of "wartime" blockade in the meaning of international humanitarian law,[18] the (potential) similarity of their effects on the civilian populations of the countries targeted may be seen as calling for the applicability, mutatis mutandis, of the requirements of the law of armed conflict (international humanitarian law) and the principles of necessity, proportionality and discrimination to non-forcible (peacetime) economic sanctions that may amount to a blockade.[19] The principle of discrimination in the law of armed conflict refers to the sharp distinction between combatants and non-combatants (a principle also referred to as the "distinction principle")[20] and the imperative that any use of force be demonstrably necessary, proportional to the necessity, and capable of discriminating between combatants and non-combatants.[21]

26. Arguing that those criteria found in the law of armed conflict are not applicable (at least mutatis mutandis) to economic sanctions amounting to a de facto blockade would lead to an absurd, unacceptable outcome: civilians would then be deprived in peacetime of the protection offered in wartime by international humanitarian law against the very same kinds of measures. It is widely accepted that blockades in wartime shall not entail starvation or "collective punishment" of the populations affected, a behaviour that contradicts the rules of the law of armed conflict, especially article 33 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention). The safeguards of international humanitarian law have been established primarily to protect the civilian

[15] See generally Stephen. C. Neff, "Boycott and the law of nations: economic warfare and modern international law in historical perspective", *British Yearbook of International Law* vol. 59, No. 1 (1989).

[16] See V. Lowe and A. Tzanakopoulos, "Economic warfare" in *Max Planck Encyclopedia of Public International Law*, Rüdiger Wolfrum, ed. (Oxford, Oxford University Press, 2012).

[17] Ibid.

[18] A blockade is generally defined as a belligerent operation to prevent vessels and/or aircraft of all nations, enemy and neutral, from entering or exiting specified ports, airports, or coastal areas belonging to, occupied by, or under the control of an enemy nation. See Wolff Heintschel von Heinegg, "Blockade", in *Max Planck Encyclopedia of Public International Law* (updated October 2015); and Yoram Dinstein, *The Conduct of Hostilities under the Law of International Armed Conflict* (Cambridge, Cambridge University Press, 2016) pp. 257–259.

[19] See W. Michael Reisman and Douglas L. Stevick, "The applicability of international law standards to United Nations economic sanctions programmes", *European Journal of International Law*, vol. 9, No. 1 (1998).

[20] See Steven Haines, "The developing law of weapons, humanity, distinction, and precautions in attack" in *The Oxford Handbook of International Law in Armed Conflict*, Andrew Clapham and Paola Gaeta, eds. (Oxford, Oxford University Press, 2014).

[21] See Reisman and Stevick, "The applicability of international law standards to United Nations economic sanctions programmes".

population against the effects of military operations in an armed conflict, but there is no reason why those safeguards should not apply to economic sanctions imposed in the course of or outside an armed conflict — even, it has been argued, those decided by the Security Council.[22] Irrespective of whether the measures considered are applied in peacetime or in connexion with military operations, de facto blockades imposed as a result of measures aiming at the economic isolation of the target country, through restrictions or prohibitions on imports and exports abroad and transfers of goods between the target and the rest of the world, also entail some form of collective punishment. It has been argued in that respect that "economic sanctions … whether applied by the United Nations under Chapter VII of the Charter or unilaterally, must be designed with regard to the techniques selected, with as much attention to context and capacity for discrimination as must a lawful sanctions programme using the military instrument".[23]

27. In that context, there appears to be no valid reason why peacetime measures having basically the same effects as blockades could be considered as lawfully inducing situations of starvation or collective punishment (in addition to adversely affecting a range of basic human rights), where such situations would have been deemed unacceptable in military conflict under the rules of international humanitarian law.

28. In the context of a proliferation of sanctions, the Special Rapporteur considers it necessary to renew his proposal to establish a consolidated central register at the level of the Secretariat to recapitulate the list of all unilateral sanctions in force.[24] The absence of a central United Nations register and the correlative impossibility of obtaining and collecting exhaustive data on sanctions regimes applied worldwide, their characteristics, their scope, targets and consequences, and possible interference with Security Council sanctions, hamper the coherence of international action, as well as public awareness and accurate understanding of the phenomenon of unilateral coercive measures and of their adverse consequences for the enjoyment of human rights.

29. When sanctions, especially those purporting to have extraterritorial effect, are used as a routine foreign policy tool against each and every State, Government or entity that the most prolific sanctions user unilaterally determines, on the basis of questionable "evidence" or mere suspicions or allegations that a corrupt regime engaged in malign activities is attempting to subvert Western democracies, the very architecture of the international system based on the Charter of the United Nations and the International Bill of Human Rights is at risk. It will be increasingly difficult to maintain an international order allowing for international cooperation and understanding, effective respect for and promotion of human rights, or even mere coexistence among States, if sanctions and embargoes grounded in the rhetoric of confrontation become commonplace tools and take precedence over normal diplomatic intercourse. It may be worth recalling that Article 2 (1) of the Charter of the United Nations states that the Organization is "based on the principle of the sovereign equality of all its Members" and that Article 1 (2) sets out as one of the purposes of the United Nations to "develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace". Also, at a time when threats of the use of coercion or even armed force are voiced, either in a veiled form or openly, in public addresses or in casual Twitter messages, the continued relevance of Article 2 (4) of the Charter, which states that "All Members shall refrain in their international relations from the threat or use

[22] See Hans-Peter Gasser, "Collective economic sanctions and international humanitarian law: An enforcement measure under the United Nations Charter and the right of civilians to immunity: an unavoidable clash of policy goals?", *Zeitschrift für Ausländisches Öffentliches Recht und Völkerrecht (ZaöRV)*, vol. 56.

[23] See Reisman and Stevick, "The applicability of international law standards to United Nations economic sanctions programmes".

[24] Draft elements of a United Nations register of unilateral sanctions likely to have a human rights impact were appended to the previous report of the Special Rapporteur (A/HRC/36/44, annex, appendix I), as a possible basis for multilateral negotiations aimed at the establishment of such a register.

of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations", is to be reaffirmed.

B. The reimposition of a comprehensive embargo on the Islamic Republic of Iran

30. On 8 May 2018, the President of the United States ended the participation of the United States in the Joint Comprehensive Plan of Action, the agreement reached in Vienna on 14 July 2015 between the Islamic Republic of Iran, China, France, Germany, the Russian Federation, the United Kingdom of Great Britain and Northern Ireland, the United States and the European Union. The President of the United States instructed his administration to immediately begin the process of reimposing sanctions related to the Joint Comprehensive Plan of Action.[25]

31. The withdrawal from the Joint Comprehensive Plan of Action by the United States and its subsequent reimposition of a drastic, comprehensive unilateral sanctions regime on the Islamic Republic of Iran raises in itself (irrespective of its human rights consequences, which will be addressed later in the present report) important issues as to its lawfulness under international law. The Special Rapporteur does not intend to elaborate on that point and will stick to the human rights-related aspects of the withdrawal. He notes, however, that it is quite clear that the withdrawal of the United States qualifies as a breach or a violation of the Plan of Action, which is a multilateral agreement enumerating a series of reciprocal commitments of the parties, thus creating rights and obligations for them under international law. It is thus covered by the fundamental rule of international law *pacta sunt servanda*, as acknowledged by several participants.[26] Moreover, the Plan of Action was endorsed by the Security Council in resolution 2231 (2015), in which it urged "full implementation on the timetable established in the JCPOA" and called upon "all Member States, regional organizations and international organizations to take such actions as may be appropriate to support the implementation of the JCPOA, including by taking actions commensurate with the implementation plan set out in the JCPOA and this resolution and by refraining from actions that undermine implementation of commitments under the JCPOA". That included, obviously, the obligation for States to refrain from applying the sanctions waived under the agreement. In resolution 2231 (2015), the Security Council explicitly emphasized that Member States were obligated under Article 25 of the Charter of the United Nations to accept and carry out the decisions of the Security Council.

32. As was affirmed by the International Court of Justice in the Namibia advisory opinion: "when the Security Council adopts a decision under Article 25 in accordance with the Charter, it is for member States to comply with that decision. ... To hold otherwise would be to deprive this principal organ of its essential functions and powers under the Charter."[27]

Intended consequences of the sanctions regime

33. United States officials have made clear that harming the Islamic Republic of Iran at large were the "actually intended consequences" of the sanctions regime.[28] The United States Secretary of State claimed that the United States would apply unprecedented financial pressure on the Iranian regime, stressing that the "sting of sanctions will be

[25] See www.whitehouse.gov/briefings-statements/president-donald-j-trump-ending-united-states-participation-unacceptable-iran-deal/.

[26] See the speech by the High Representative of the Union for Foreign Affairs and Security Policy/Vice-President of the Commission, Federica Mogherini, at the European Parliament plenary session on the Joint Comprehensive Plan of Action, 12 December 2017, available from https://eeas.europa.eu/headquarters/headquarters-homepage/37259/speech-high-representativevice-president-federica-mogherini-european-parliament-plenary_en.

[27] See *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971*, p. 53.

[28] See www.state.gov/r/pa/prs/ps/2018/05/281959.htm.

painful if the regime does not change its course from the unacceptable and unproductive path it has chosen to one that rejoins the league of nations. These will indeed end up being the strongest sanctions in history when we are complete. … After our sanctions come in force, it will be battling to keep its economy alive".[29] The underlying reasoning, considered as a justification of that approach, has been clarified by United States officials as follows: "We do think that, given the IRGC's penetration of the Iranian economy and Iran's behaviour in the region, as well as its other nefarious activities, that companies should not do business in Iran. That is an intended consequence".[30] The stated intention of the United States is to build the economic isolation of Iran through wide use of secondary sanctions.[31] Thus, the (alleged) malign behaviour of the Iranian political leadership, as unilaterally ascertained by the leadership of one single State, serves as a justification for the imposition of what is intended to be in practice the strongest sanctions regime in history. No doubt the impact of the sanctions will harm ordinary people in the Islamic Republic of Iran and affect their enjoyment of a range of human rights. Not only is such an adverse effect not denied, but this is even an intended, assumed and claimed consequence of the sanctions to come.

34. The reimposition of a comprehensive trade embargo on the Islamic Republic of Iran, purporting to apply to third parties worldwide under the threat of adverse consequences for corporations also doing business in the United States is a significant step backwards.[32] It exemplifies the rise of sanctions regimes whose effects correspond in some way to a peacetime blockade, the difference from a wartime blockade being, as noted previously, that the corresponding international protection provided by international humanitarian law in wartime does not appear to be readily available. An evaluation of the consequences of this sanctions regime calls for an evaluation of those measures against the criteria set in international humanitarian law and for the immediate cessation of those measures found to disregard the imperatives of necessity, proportionality and discrimination. As is well known, the catastrophic consequences for human rights of broad trade embargoes imposed under the authority of the United Nations in the 1990s, especially with respect to Iraq,[33] prompted a shift away from comprehensive sanctions to so-called smart sanctions. As was noted by some scholars in 2003, a "new norm against comprehensive sanctions has become part of the shared understanding among states".[34] It could be hoped that this move would be irreversible; but this has proven not to be the case. While the Special Rapporteur has in a previous report questioned the "smartness" of smart sanctions, he acknowledges that comprehensive sanctions have the potential to hurt civilian populations in a much more severe manner. The position expressed in 2008 by the European Parliament that it opposed "the application, in all circumstances, of generalised, indiscriminate sanctions to any country, since this approach leads de facto to the total isolation of the population"[35] is of continued relevance and should be reaffirmed. It is to be emphasized that the combination of comprehensive unilateral coercive measures and of the imposition of secondary sanctions on third parties unrelated to the dispute are tantamount to a peacetime blockade.

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[29] See www.state.gov/secretary/remarks/2018/05/282301.htm.

[30] See www.state.gov/r/pa/prs/ps/2018/05/281959.htm.

[31] Ibid.

[32] See, for example, www.ft.com/content/cfe5b294-7e0e-11e8-bc55-50daf11b720d.

[33] Iraqi gross domestic product was cut roughly in half by the sanctions. It has been estimated that the country lost between $175 billion and $250 billion in possible oil revenues from the sanctions. The price of a family's food supply for a month increased 250 times over the first five years of the sanctions regime. According to estimates, the sanctions caused a minimum of 100,000 and up to 227,000 excess deaths among young children from August 1991 to March 1998. See Daniel W. Drezner "Economic sanctions in theory and practice: how smart are they?" in *Coercion. The Power to Hurt in International Politics*, Kelly M. Greenhill and Peter Krause, eds. (Oxford, Oxford University Press, 2018), p. 259. Also, it has been noted that economic sanctions may well have been the cause of the deaths of more people in Iraq than have been slain by all so-called weapons of mass destruction throughout history: see John Mueller and Karl Mueller, "Sanctions of mass destruction", *Foreign Affairs*, vol. 78, No. 3 (May–June 1999).

[34] See Darren Hawkins and Joshua Lloyd, "Questioning comprehensive sanctions: the birth of a norm", *Journal of Human Rights* vol. 2, No. 3 (2003).

[35] European Parliament, Committee on Foreign Affairs, "Report on the evaluation of EU sanctions as part of the EU's actions and policies in the area of human rights" (15 July 2008), para. 14.

Secondary sanctions and the issue of extraterritoriality

35. As outlined by the Special Rapporteur in his previous report to the Human Rights Council, there is a general understanding that extraterritorial sanctions disregard commonly accepted rules governing the jurisdiction of States under international law and consequently that such measures are unlawful (see A/HRC/36/44, paras. 22–24). The recent imposition of further wide-scale secondary sanctions purporting to apply to third parties not concerned with the dispute has attracted widespread condemnation from the overwhelming majority of the international community. The European Union, in particular, once again voiced its condemnation of extraterritorial coercive measures on the occasion of the repudiation of the Joint Comprehensive Plan of Action by the United States in May 2018. As it explained: "Some of the measures which the United States will reactivate against Iran have extraterritorial effects and, in so far as they unduly affect the interests of natural and legal persons established in the Union and engaging in trade and/or the movement of capital and related commercial activities between the Union and Iran, they violate international law and impede the attainment of the Union's objectives."[36]

36. In the European Union, a range of extraterritorial measures are already subject to Council regulation No. 2271/96, which was adopted in reaction to the adoption by the United States of restrictive measures concerning Cuba, the Islamic Republic of Iran and Libya. That negatively affected the interests of natural and legal persons in the Union engaging in business with those countries, which was perfectly legitimate under European Community law.[37] The regulation basically provides protection against, and counteracts the effects of, the extraterritorial application of the sanctions measures covered, "where such application affects the interests of persons … engaging in international trade and/or the movement of capital and related commercial activities between the Community and third countries".[38] Persons and entities, as defined in article 11 of Council regulation No. 2271/96, shall not comply, "whether directly or through a subsidiary or other intermediary person, actively or by deliberate omission, with any requirement or prohibition, including requests of foreign courts, based on or resulting, directly or indirectly, from the [sanctions covered] or from actions based thereon or resulting therefrom".[39] Moreover, the regulation provides that "No judgment of a court or tribunal and no decision of an administrative authority located outside the Community giving effect, directly or indirectly, to the [sanctions covered] or to actions based thereon or resulting therefrom, shall be recognized or be enforceable in any manner".[40]

37. Following unanimous backing on 16 May 2018 by European Union Heads of State or Government, on 18 May 2018 the European Commission launched a process to expand the scope of Council regulation No. 2271/96 by adding to it the extraterritorial measures which the United States were going to impose on the Islamic Republic of Iran.[41] The Special Rapporteur stresses that the unlawfulness of those extraterritorial measures stems also from their egregious and undiscriminating adverse human rights consequences, and expresses his hope that the European Union will engage with the United Nations and in particular with other Member States and with his mandate to address the immediate adverse human rights impact of secondary sanctions and blockades, and support the rapid finalization and adoption of guidelines in that respect, as suggested in the present report.

Issues of discrimination

38. There is a strong legal argument to the effect that sanctions may have a discriminating effect on the basis of the country of residence or nationality of the targeted

[36] See European Commission, explanatory memorandum on the draft Commission delegated regulation of 6.6.2018 amending the annex to Council regulation No. 2271/96 of 22 November 1996 protecting against the effects of extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom, para. 1.

[37] Ibid.

[38] Council regulation (EC) No. 2271/96, art. 1.

[39] Ibid., art. 5.

[40] Ibid., art. 4.

[41] Ibid., para. 1.

populations. Discrimination on the basis of nationality or national origin violates, inter alia, article 26 of the International Covenant on Civil and Political Rights and articles 1 and 2 of the International Convention on the Elimination of All Forms of Racial Discrimination.

39. That argument may be made in particular with respect to the practical effects of the unilateral comprehensive measures taken by the United States targeting the Islamic Republic of Iran, under which Iranian people are deprived of the opportunity of conducting normal business (and other) relations with foreign counterparts.

40. Reference could also be made to the legal challenges that have been brought by Iranians in recent years before the courts in the United Kingdom against a number of British banks, on the grounds that they had been subjected to racial discrimination by the banks, in breach of the provisions of the Equality Act 2010, after their bank accounts were closed.[42] It has been reported that compensation was obtained by the claimants in most of those cases, often as the result of pretrial settlements.

C. Sanctions on the Russian Federation and their economic and social consequences

41. On 6 April 2018, the United States Treasury imposed additional sanctions on the Russian Federation,[43] designating 7 Russian so-called oligarchs and 12 companies they owned or controlled, as well as 17 senior Russian government officials and a State-owned Russian weapons trading company and its subsidiary, a Russian bank.[44] Those sanctions have extraterritorial effect, i.e. they may affect non-Americans conducting dealings with sanctioned Russian parties. Owing to its magnitude in terms of the profile of the targets (which encompass a wide range of economic sectors), the measure is widely believed to jeopardize the prospects of Nord Stream 2, the €9.5 billion pipeline project that will transport natural gas from the Russian Federation to Germany. Analysts believe that the pipeline, capable of supplying energy to 26 million households, which is currently under construction and scheduled to start deliveries in 2020, will face difficulty in obtaining adequate financing from Western banks.[45] The underlying logic is well known: "Because the United States is the epicentre of global finance, international bankers [need] access to U.S. capital markets to conduct international transactions".[46] Bankers believe that they cannot afford the risk of being exposed to stiff penalties in the United States, or even forced out of the American market. European Union companies engaged in the Nord Stream 2 project are being openly threatened with sanctions by the United States administration. A spokesperson for the State Department is reported to have said: "We have been clear that firms working in the Russian energy export pipeline sector are engaging in a line of business that carries sanctions risk".[47]

42. Another significant target of the new sanctions measures is RUSAL, a Russian company which is the world's largest aluminium producer outside China. By adding the company to its "specially designated nationals" sanctions list, the United States has effectively choked off its access to the international financial system.[48] Despite the claim that the Government of the United States was not targeting the hardworking people who

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[42] See www.theguardian.com/world/2014/mar/28/iranians-uk-banks-closed-accounts-claim-racial-discrimination.

[43] For an overview and analysis of the measures currently in force against the Russian Federation, see A/HRC/36/44/Add.1.

[44] See https://home.treasury.gov/news/featured-stories/treasury-designates-russian-oligarchs-officials-and-entities-in-response-to.

[45] See https://global.handelsblatt.com/politics/us-sanctions-russia-nord-stream-2-gas-companies-909619.

[46] See Daniel W. Drezner, "Economic sanctions in theory and practice: how smart are they?" in *Coercion. The Power to Hurt in International Politics*.

[47] See https://foreignpolicy.com/2018/06/01/u-s-close-to-imposing-sanctions-on-european-companies-in-russian-pipeline-project-nord-stream-two-germany-energy-gas-oil-putin/.

[48] See www.reuters.com/article/us-usa-russia-sanctions-rusal-exclusive/exclusive-rusal-seeks-sanctions-relief-via-board-changes-exports-at-risk-if-plan-fails-sources-idUSKBN1HY0ZG.

depend on RUSAL and its subsidiaries[49] and the granting by the Department of Treasury Office of Foreign Assets Control of limited "licences" allowing a short deadline for Americans and persons of other nationalities to wind down their dealings with RUSAL, the chilling economic impact of the sanctions has been catastrophic. The company has seen customers stop buying its aluminium and creditors scramble to offload debt. Reuters reported that RUSAL shares had lost almost 60 per cent of their value after the imposition of sanctions, while aluminium and alumina prices had soared, hitting businesses around the world, including in the United States. The sanctions are likely to adversely affect the daily life of nearly 100,000 people employed by RUSAL across its international operations and offices in several countries, not only in the Russian Federation, and tens of thousands that depend on those jobs. It is to be stressed that those individuals bear no responsibility for the ownership structure of the company for which they are working.

43. In the view of the Special Rapporteur, it is also questionable in relation to the sanctions that Russian State officials have been blacklisted merely on the grounds of their profession: to borrow the words of the Office of Foreign Assets Control - for being an official of the Government of the Russian Federation, without any alleged or specified involvement in unlawful conduct or activities being invoked by the sanctioning State. The mere fact of being an official of the Government of the Russian Federation now seems to be deemed sufficient to be included in a list of targeted individuals, which sets an ominous precedent, and furthermore amounts to a blunt denial of human rights. The persons targeted here are punished for the conduct of other persons, which corresponds to the concept of guilt by association, which is widely rejected by modern international criminal law and human rights law.[50]

D. An escalation in sanctions measures

44. Also of concern is the recent designation of sanctions by the Office of Foreign Assets Control against Dena Airways, the company that operates the presidential aircraft used by the President of the Islamic Republic of Iran, Hassan Rouhani, for official travel.[51] It is to be feared that this measure, based on allegations of links with the Islamic Revolutionary Guard Corps and reported military airlifts to the Syrian Arab Republic, could lead airport service companies worldwide to decline to refuel or service the aircraft. In February 2018, an aircraft used by the Iranian Foreign Minister, Javad Zarif, to attend the Munich Security Conference, and registered with another blacklisted Iranian airline, Meraj Airways, had to be refuelled by the German military after companies refused to provide services to the aircraft, citing United States sanctions. It is also to be noted that similar designations by the Office of Foreign Assets Control have previously targeted various Iranian aviation companies, including Mahan Air, the largest airline by fleet size and number of destinations in the country, which will drastically affect the ability of the airline to continue operating its international flights.[52] Resorting to sanctions that affect the normal, safe operation of civilian aircraft is a highly questionable practice that has the potential to jeopardize air safety and the security of passengers. The Special Rapporteur is also of the view that the designation of aircraft used for official flights made by figures of the Iranian administration is totally unacceptable, owing to its direct effect, which is to prevent diplomatic intercourse among nations. The measure also contradicts the generally accepted principle of international law that State aircraft enjoy sovereign immunity.[53] In addition, it is clear that a head of State and his or her aircraft enjoy immunity and

[49] See https://home.treasury.gov/news/press-releases/sm0365.

[50] The trend towards blacklisting ministers and high- or even low-ranking government and administration officials of sanctioned countries in an indiscriminate manner, merely on the grounds of their position or appointment (that may have been unsolicited or result from popular election) is also a matter of concern.

[51] See www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20180524.aspx.

[52] See, for example, https://home.treasury.gov/news/press-releases/sm0395.

[53] See Roger O'Keefe, "Article 3" in *The United Nations Convention on Jurisdictional Immunities of States and their Property: A Commentary*, Roger O'Keefe and Christian J. Tams, eds. (Oxford, Oxford University Press, 2013).

inviolability under international law, as was stressed by the Secretary-General with respect to the incident in 2013, in which the aircraft carrying the President of the Plurinational State of Bolivia, Evo Morales, was not allowed by several European nations to overfly their airspace.[54]

45. On a related note, measures such as those targeting a head of State in office after his re-election,[55] and high-level officials including the head of the central bank of a State,[56] appear to be unprecedented moves, likely to escalate underlying disputes and inhibit the prospects of a negotiated, peaceful settlement, since they affect the ability of the target States simply to interact with the international community (or, in the case of the governor of a central bank, his ability to interact with central banks of other States and the global financial system at large).

46. On a related note, the Special Rapporteur pays tribute to the European Union which, while having voted against the creation of his mandate, has respected the decision taken by the Human Rights Council and cooperated effectively with the mandate holder. That sets an example for others to follow.

Lessons learned on the practice of diplomacy in the context of the mandate

47. As an ambassador, the Special Rapporteur was one of the framers of Human Rights Council resolutions 5/1 on institution-building of the Council and 5/2 on the code of conduct for special procedure mandate holders. At that time, it was recognized that one of the reasons for the demise of the Commission on Human Rights was that it had indulged excessively in "naming and shaming" rather than engaging in dialogue with Member States to advance human rights, where dialogue was still possible, and in providing advice and technical assistance to improve their compliance with human rights obligations. That explains why in both resolutions emphasis was put on interactive dialogue, non-confrontational postures, non-politicization, a focus on the enhancement of the capacity of States in that regard and the provision of technical assistance with the consent of the State concerned. Seen from that perspective, the human rights mechanisms have the same goals as independent human rights defenders and NGOs but can pursue them in a distinct and complementary manner rather than acting as though they were another advocacy NGO. That applies particularly to the mandate on the negative impact of unilateral coercive measures on the enjoyment of human rights, where the issue lies mainly with the source countries or groups of countries enforcing unilateral coercive measures directed most often, although not always, at weaker and more vulnerable States. The source countries tend to be powerful or rich countries and may not respond positively to public admonishment by the Special Rapporteur. On the contrary, that may lead to a refusal to engage by source countries, either because they consider that their national legislation takes precedence over international law or because, contrary to the Charter of the United Nations and to the thrust of adoption by majority voting on General Assembly and Human Rights Council resolutions, they consider their action not to be contrary to international law. Scoring a legal point publicly in such circumstances may negatively affect opportunities for engagement with the source of sanctions, damaging the ability of the mandate holder to work towards the gradual alleviation of the sufferings of innocent victims.

48. The Special Rapporteur believes that the United Nations human rights mechanisms, including his mandate in particular, should be wary of following the same course of action as the Commission on Human Rights in returning to systematic "naming and shaming", which scores political points but with scant effect on improving the status of human rights for vulnerable people at the grass roots, who actually bear the brunt of unilateral coercive measures. This mandate has therefore endeavoured to limit its work through public

[54] See https://news.un.org/en/story/2013/07/444262.

[55] In July 2017, the Office of Foreign Assets Control designated the President of Venezuela, Nicolas Maduro Moros, pursuant to executive order No. 13692, in which sanctions against current or former officials of the Government of Venezuela and others undermining democracy in Venezuela are authorized. See www.treasury.gov/press-center/press-releases/Pages/sm0137.aspx.

[56] See https://home.treasury.gov/news/press-releases/sm0385.

channels to cases of broad life-threatening situations, as provided for in article 10 of the code of conduct. Whenever the Special Rapporteur has had a possibility to engage constructively with a source or a target country or both, he has opted for quiet diplomacy and for promoting consensus, as was the case for the lifting of sanctions on the Sudan. In that instance, joint engagement with the parties through quiet diplomacy by the Independent Expert on the Sudan and the Special Rapporteur achieved the desired objective. The Sudanese authorities have in effect acknowledged the role of the two special procedure mandate holders in the successful outcome of the process that led to the lifting of sanctions from the Sudan. That approach has had the effect of improving the living conditions of the most vulnerable groups in the Sudan.

49. The Special Rapporteur believes that this is the most productive way to engage with his mandate and will continue to pursue the approach of building bridges rather than fuelling tension between sources and targets of sanctions, to the best of his ability. That approach is being pursued without letting up on the effort to promote awareness of the undercurrent of a tremendous expansion of unilateral sanctions through setting up and keeping a United Nations register of such sanctions. The attention of the mandate will also remain focused on initiatives to introduce, reassert and expand on potential legal instruments, tools or guidelines that can protect innocent victims from the adverse human rights impact of sanctions. The preferred option for that purpose is to adhere to the channels of the institutional framework of the United Nations rather than consider the mission of the mandate accomplished by the issuance of a press communiqué.

A special representative on unilateral coercive measures

50. The Secretary-General of the United Nations should consider appointing one or more special representatives on unilateral coercive measures, each in charge of a specific country sanctions regime, as appropriate. That would be a very strong signal of the engagement of the United Nations system with the ongoing efforts to limit and ultimately abolish the use of unilateral coercive measures, as the only legitimate use of sanctions arises from measures applied by the Security Council through Chapter VII of the Charter of the United Nations. The mandate of a special representative on unilateral sanctions could encompass advocacy for the respect of international law in matters related to unilateral coercive measures, the negotiation of relief measures, alleviation of the most indiscriminate measures and ultimately promotion of a consensus on a case-by-case basis for the removal of unilateral sanctions. The Special Rapporteur is of the view that those issues extend beyond his mandate, which is focused on the protection of human rights affected by sanctions. The Special Rapporteur could interact with the special representative(s) on sanctions, as appropriate.

VI. Conclusions and recommendations

51. **The objective of the mandate is to promote the rule of law to the international community, with a view to eliminating economic coercion as a tool of international diplomacy. To that end, the Special Rapporteur notes with appreciation the efforts made by the Islamic Republic of Iran and Qatar to challenge the legality of the use of unilateral coercive measures through international adjudication. The Special Rapporteur reiterates his suggestion to Member States to request the renewal of the work of the International Law Commission on "extraterritorial jurisdiction" that was initiated in 2006 (see A/61/10, annex E, and A/72/370, para. 58). The Commission could be called upon to elaborate, inter alia, on the legal status and consequences of sanctions involving the unlawful assertion of jurisdiction by a source State or group of States over target States and a fortiori on third States. It is recalled in that respect that, under article 17 of its statute, the Commission shall consider proposals and draft multilateral conventions submitted by Member States, the principal organs of the United Nations other than the General Assembly, specialized agencies or official bodies established by intergovernmental agreement to encourage the progressive development of international law and its codification, and transmitted to it for that purpose by the Secretary-General.**

52. **The Special Rapporteur encourages the Secretary-General to consider appointing one or more special representatives on unilateral coercive measures to limit and ultimately abolish the use of unilateral coercive measures, ensuring that sanctions are only applied through the Security Council in accordance with Chapter VII of the Charter of the United Nations.**

53. **Finally, the Special Rapporteur requests that Member States begin consultations on a draft declaration on unilateral coercive measures and the rule of law, incorporating the elements proposed in the annex to the present report, to be presented at an upcoming session of the General Assembly, to establish an international consensus on the minimum human rights protections which must be applied to the use of unilateral coercive measures.**

Annex

Elements for a draft General Assembly declaration on unilateral coercive measures and the rule of law (updated)

A. Basic facts

1. Resolution 34/13 adopted by the Human Rights Council on 24 March 2017 "urged all States to refrain from imposing unilateral coercive measures, also urged the removal of such measures, as they are contrary to the Charter and norms and principles governing peaceful relations among States at all levels, and it should be recalled that such measures prevent the full realization of economic and social development of nations while also affecting the full realization of human rights".

2. Unilateral coercive measures have a tendency to remain in force irrespective of the achievement of its purported objective.

3. Unilateral coercive measures involving extraterritorial application of domestic measures are unlawful under international law.

4. Unilateral coercive measures in a number of cases entail severe adverse impacts on the enjoyment of human rights of targeted populations and individuals, have often proven to be inefficient, and are most likely to entail unintended effects in the form of adverse human rights impacts on non-designated third parties.

B. Basic principles

5. Whilst targeted States have a responsibility to mitigate the adverse human rights impact of unilateral sanctions imposed by source countries, the latter are also accountable for any adverse effects on human rights occurring in target countries, even if such effects are unintended, to the extent that "when an external party takes upon itself even partial responsibility for the situation within a country (whether under Chapter VII of the Charter or otherwise), it also unavoidably assumes a responsibility to do all within its powers to protect the economic, social and cultural rights of the affected population" (Committee on Economic, Social and Cultural Rights, General Comment No. 8 on the relationship between economic sanctions and respect for economic, social and cultural rights, E/C.12/1997/8, para. 13).

6. The inhabitants of a given country do not forfeit basic economic, social and cultural rights by virtue of any determination that their leaders have violated norms of international peace and security, as affirmed by the Committee on Economic, Social and Cultural Rights in its general comment No. 8 on the relationship between economic sanctions and respect for economic, social and cultural rights (See E/C.12/1997/8, para. 16).

7. In situations where unilateral coercive measures inflict undue sufferings/have an egregious human rights impact, on the population of a targeted State, whatever legal motive is invoked, they become clearly illegal and their source countries should be called to account. This applies in particular to comprehensive embargoes coupled with secondary sanctions aimed at the economic isolation of the target country, the effects of which may be comparable with those of a wartime blockade.

8. Such call for the removal of unilateral coercive measures applies to comprehensive measures as well as to targeted measures and to economic as well as to financial measures.

9. As a consequence, the basic principle should be that States and groups of States should commit themselves to refraining from imposing unilateral coercive measures, as well as remove such measures as are in force, and shall commit to using other means of peaceful settlement of international disputes and differences.

10. The present Declaration is without prejudice to the procedural and substantive requirements arising from the legal regime of countermeasures in the sense of the International Law Commission's Draft Articles on the Responsibility of States for internationally wrongful acts.[1]

11. When comprehensive embargoes coupled with secondary sanctions aimed at the economic isolation of the target country produce effects comparable with those of a wartime blockade, the relevant rules of international humanitarian law applicable to blockade, as well as the general requirements of necessity, proportionality and discrimination and the prohibitions of starvation and collective punishment, should become applicable mutatis mutandis.

C. Mitigation: Universally/Generally accepted rules of behaviour

12. Pending the total removal and termination of all existing unilateral coercive measures and renunciation to their use, all efforts should be made to mitigate the adverse effect of unilateral sanctions on human rights;

13. The transitional period preceding the total removal and termination of all existing unilateral coercive measures and renunciation to their use should be shortened to the greatest extent possible.

14. During the transitional period, the following universally accepted rules of behaviour shall be asserted to mitigate the adverse impacts of unilateral sanctions:

(a) The parties considering the implementation of unilateral sanctions are under an obligation to conduct a transparent human rights impact assessment (HRIA) of the measures envisaged, before sanctions are applied, and to monitor on a regular basis, as long as sanctions remain in force, the effects of implementation of the measures, including as regards their adverse effects on human rights; there should be effective mechanisms in place at national level to ensure that State authorities in charge of sanctions programmes adjust or change the sanctions regime with a view to preventing human rights violations identified through HRIAs;

HRIAs should allow for the effective public participation of the populations affected by sanctions, and ensure that information gathered be made publicly (and widely) available.

NGOs and international organizations may also conduct HRIAs of sanctions programmes, especially in cases where the State enacting sanctions fails to conduct such assessment.

HRIAs should also be conducted in cases of sanctions imposed by groups of States or regional organizations.

(b) The parties implementing unilateral sanctions are under an obligation to ensure effective humanitarian exemptions mechanisms whose effectiveness can be gauged by target country institutions, both governmental and non-governmental, for satisfying basic human rights and essential humanitarian needs;

(c) There must be an end to the politicization of what was intended to be a purely technical interbank international financial transfer mechanism, whose manipulation in the form of selective exclusion is tantamount to re-introducing comprehensive sanctions on targeted countries;

(d) Mechanisms to guarantee due process, and the availability of judicial review for obtaining remedies and redress for unilateral coercive measures, should be available to:

1. Impacted groups whether the impact is intended or unintended (by comprehensive or sectoral sanctions), and

[1] A/56/10.

2. Individuals and legal persons and entities targeted (by targeted sanctions) but found not to have been given a chance to benefit from due process.

The need for such mechanisms stems from a number of multilateral human rights instruments such as the Universal Declaration of Human Rights (Articles 8 and 10), the International Covenant on Civil and Political Rights (Articles 2 and 14 (1)), the Convention on the Rights of the Child (Article 39), the International Convention on the Elimination of All Forms of Racial Discrimination (Article 6) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Article 14). Where it is found to prevail, the lack of effective mechanisms for the judicial review of unilateral sanctions measures, and remedies and redress for victims as appropriate, should be addressed without delay to the extent that such situation amounts to a denial of justice.

(e) The basic components of the requirement of due process in relation to unilateral coercive measures, pending their total elimination, shall be the following:

(i) Mechanisms and procedures for judicial review of unilateral coercive measures:

1. The factual and legal grounds for the measures have to be disclosed to the concerned parties;

2. The availability of, and the mechanisms and procedures for, a right to appeal/judicial review, should be made known to the targeted parties upon notification to the concerned parties;

3. Such mechanisms and procedures should allow for a review of the substantive factual and legal grounds for the unilateral coercive measures, in accordance with international law and international humanitarian law, as well as in compliance with internationally recognized procedural standards;

4. Such mechanisms and procedures should be in place and available at the same level (either domestic or international [either regional organization or the United Nations]) as the source of the unilateral coercive measures concerned; in case of unavailability of procedures for remedies at the domestic level or at the level of a group of countries imposing sanctions, the targeted countries or persons should be entitled to seek remedies by the Committee of the treaty body concerned, i.e. CESCR;

5. Such mechanisms and procedures should be of a judicial nature or at least, for a transitional period, of the nature of an Ombudsperson or other quasi-judicial mechanism.

(ii) Notification of the measures to the parties concerned as soon as practicable, without affecting the effectiveness of the measures;

(iii) Time-bound limitation of the measures, and biannual monitoring and review;

(iv) Reversibility of the measures;

(v) Appropriate humanitarian exceptions;

(vi) A regular mechanism to monitor potential adverse impact and unintended consequences of these measures; and

(vii) Availability of effective compensation/reparations (including financial) when unwarranted adverse impacts on human rights have occurred.